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SUPER LAW GROUP, LLC

September 29, 2017

Via Certified Mail, Return Receipt Requested

Bestway Carting Inc.
49-60 Annandale Lane
Little Neck, New York 11362

City Recycling Corp.
151 Anthony Street
Brooklyn, New York 11222

Lidia Casagrande
49-60 Annandale Lane
Little Neck, New York 11362

Gino Casagrande
49-60 Annandale Lane
Little Neck, New York 11362

Luciano Casagrande
49-60 Annandale Lane
Little Neck, New York 11362

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear All:

I am writing on behalf of Riverkeeper, Inc.¹ ("Riverkeeper") to notify you of Riverkeeper's intent to file suit against Bestway Carting, Inc., City Recycling Corp., Lidia Casagrande, Gino Casagrande, and Luciano Casagrande (together, "Bestway") pursuant to Section 505(a) of the federal Clean Water Act ("CWA")² for violations of the CWA.

¹ Riverkeeper, Inc. is a not-for-profit environmental organization existing under the laws of the state of New York, headquartered in Ossining, New York. Riverkeeper's mission includes safeguarding the environmental, recreational and commercial integrity of the Hudson River and its ecosystem, as well as the watersheds that provide New York City with its drinking water. Riverkeeper achieves its mission through public education, advocacy for sound public policies and participation in legal and administrative forums. Riverkeeper has more than 4,500 members, many of whom reside near to, use and enjoy the Hudson River and the waters and tributaries of New York Harbor, including Newtown Creek, Coney Island Creek, Jamaica Bay, and the Gowanus Canal; waters that are polluted by industrial stormwater runoff.

² 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

Riverkeeper intends to file suit, as an organization and on behalf of its adversely affected members, in the United States District Court for the Eastern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.³

Riverkeeper intends to take legal action because Bestway is discharging polluted stormwater from Bestway's waste carting and transfer facility located near Newtown Creek in Brooklyn (the "Facility") to the waters of the United States without a permit. This is a violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.⁴ Further, Bestway has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System ("NPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit")⁵ issued by the New York State Department of Environmental Conservation ("DEC"), in violation of Sections 402(p), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

The street address of the Facility is provided in government records and on the Bestway Carting website as 151 Anthony Street, Brooklyn, NY. For clarity, the Facility location can be uniquely identified by the following tax block and lot numbers: Block 2814, Lots 1, 6, 10, 18; Block 2813, Lots 50, 55, 65

I.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies and water quality specialists is that stormwater pollution accounts for more than half of the total pollution entering the marine environment each year.⁶

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as "impaired," or not meeting water quality standards, and unable to support beneficial uses such as

³ See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

⁴ 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

⁵ New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-12-001, (hereinafter "General Permit"), available at <http://www.dec.ny.gov/chemical/9009.html>. This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. It became effective on October 1, 2012, and will expire on September 30, 2017.

⁶ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

fish habitat and water contact recreation.⁷ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from both Facilities through a separate sewer system into Newtown Creek and ultimately into the East River and New York Harbor. DEC has classified Newtown Creek as an SD water.⁸ Under New York's Water Quality Standards, a waterbody that is designated as SD is meant to be suitable for fishing and for fish, shellfish and wildlife survival.⁹ The New York Water Quality Standards also set numeric and narrative criteria for different water pollution parameters including dissolved oxygen, oil and grease, suspended and settleable solids, bacteria (pathogens), pH, temperature, nutrients, and others. A waterbody must meet these numeric and narrative criteria in order to support its designated uses.¹⁰

Newtown Creek, which is also a federally-listed Superfund site, consistently fails to meet state water quality standards: illegal stormwater discharges from these Facilities contribute to this failure.¹¹ In the past, DEC has designated Newtown Creek as impaired pursuant to Section 303(d) of the CWA¹² for failure to meet minimum water quality standards due to high oxygen demand (low levels of dissolved oxygen) and the presence of floatables (oil, grease, and other debris) attributable in part to urban stormwater runoff.¹³ While the Creek has been removed from the list of waterbodies for which a Total Maximum Daily Load ("TMDL") must be developed, the degraded water quality conditions that led to the impaired listing have not been addressed:¹⁴ polluted discharges to Newtown Creek continue to reduce the dissolved oxygen level in the Creek.¹⁵ Illegal stormwater discharges from these Facilities carry oxygen demanding chemicals into Newtown Creek and therefore contribute directly to this problem.

For years, Newtown Creek was treated as an industrial dumping ground; businesses along its banks polluted with abandon. In recent decades, New York City has worked to reclaim the quality of New York Harbor and of Newtown Creek. The City and local residents have invested

⁷ See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, http://ofmpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A (last visited Aug. 4, 2015).

⁸ See 6 N.Y.C.R.R. § 890.6.

⁹ See 6 N.Y.C.R.R. § 701.14.

¹⁰ See 6 N.Y.C.R.R. §§ 702, 703.

¹¹ See NY DEC, *Impaired/Delisted Waters NOT Included on the 2014 Section 303(d) List Sept. 2014*, available at http://www.dec.ny.gov/docs/water_pdf/303dlistfinal2014.pdf (hereinafter "303(d) List").

¹² 33 U.S.C. § 1313(d).

¹³ See 303(d) List.

¹⁴ Newtown Creek is not included on the section 303(d) list, but is included on a list of other impaired waters for which no Total Maximum Daily Load ("TMDL") will be prepared. A TMDL is not necessary because other required control measures are expected to result in restoration in a reasonable period of time. Specifically, Newtown Creek pollution is being addressed through the CSO Consent Order to meet pathogen standards. See NYS Dep't of Envtl. Conservation, *Impaired/Delisted Waters NOT Included on the 2014 Section 303(d) List*, http://www.dec.ny.gov/docs/water_pdf/303dnotlisted2014.pdf.

¹⁵ See *Id.*

heavily in efforts to rejuvenate the Creek and surrounding neighbourhoods. Recently, the U.S. EPA joined the effort by designating Newtown Creek as a Superfund site, setting aside funds for a cleanup, and mobilizing public and private efforts to restore the Creek to a healthier state.¹⁶ Riverkeeper has been working for 50 years on abating pollution in the Hudson River and its tributaries, and has been working on the Creek with the City, the EPA, and many stakeholders for almost fifteen years. It is time for Bestway to join fully in this broader effort to restore the biological integrity of Newtown Creek. At a minimum, Bestway must stop illegally discharging polluted stormwater and other effluents.

II.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

A. Bestway is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁷ Bestway's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA¹⁸ and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.¹⁹ The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, (a) by storing dumpsters, roll-off containers, trucks and other machinery outside or otherwise exposing them to the elements, and (b) by operating vehicles that enter and leave the Facility and that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facility in stormwater runoff that flows into Newtown Creek.

Bestway's activities at the Facility include but are not limited to: the collection and sorting of construction and demolition debris, commercial waste, and other recyclable wastes; the outdoor storage of roll-off containers, trucks, and heavy machinery; and vehicle maintenance that takes place on the public street. In carrying out these activities at the Facility, Bestway engages in storing and handling materials in a manner that exposes pollutants to precipitation and snowmelt. The stormwater discharged into Newtown Creek can bring solids that suspend or dissolve in stormwater, metals, hydraulic fluids, fuel, and other pollutants into the Creek.

¹⁶ See 40 C.F.R. Part 300, App. B.

¹⁷ See CWA §§ 301(a) and 402.

¹⁸ 33 U.S.C. § 1362(12).

¹⁹ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

Riverkeeper has observed and documented evidence of the release of polluted stormwater at the Facility. Riverkeeper has observed trucks, dumpsters, roll-off containers, and other waste hauling equipment stored at the Facility uncovered and exposed to precipitation. Moreover, the main access road to the Facility, Anthony Street, is covered in dirt and dust from their carting and waste management activities. Stormwater runoff from the Facility travels down Anthony Street towards Gardner Avenue where there are storm drains that discharge into Newtown Creek.

Trucks and other vehicles driving on and off the property are point sources of pollution. The Facility uses heavy vehicles and machinery outdoors. Besides the wastes they carry, vehicles and industrial equipment at the Facility may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids. Bestway's garbage trucks are parked on the street and constitute point sources of water pollution in and of themselves. Riverkeeper believes that vehicle maintenance and repairs are conducted in and around buildings at the Facility.

All of these pollution sources are exposed to precipitation and snowmelt. In addition to waste residues, these pollution sources also may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances and chemical residues. These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows.

Because Bestway fails to adequately shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Polluted stormwater discharges flow from the Facility to storm drains and into Newtown Creek. As noted above, Riverkeeper has observed stormwater flowing off the Facility and into storm drains connected to Newtown Creek.

These storm drains are part of a separate sewer system and discharge directly into Newtown Creek. Further, vehicles at the Facility track dust, particulate matter, and other contaminants to areas on and off the premises of the Facility from which these pollutants can enter stormwater and, ultimately, Newtown Creek and the New York Harbor.

Newtown Creek is a "water of the United States," as defined in 40 C.F.R. § 122.2 and, therefore, "navigable water" as defined in Section 502(7) of the CWA. Bestway does not have a NPDES permit for these discharges of pollutants. Thus, Bestway is discharging polluted industrial stormwater into navigable waters of the United States without the permit required under Sections 301 and 402 of the CWA.

B. Bestway is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.

Bestway is engaged in the business of transporting waste and storing waste, and therefore is an industrial discharger engaged in local trucking and waste transfers under Standard Industrial Classification ("SIC") Codes 4212 and 5093, which are industrial activities included in Sectors P and N of the General Permit. Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, Bestway must apply for coverage under the General Permit or an individual NPDES permit for Bestway's discharge of polluted stormwater. In addition, Bestway must apply for an individual NPDES permit if the Facility is discharging process wastewater, or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit. By failing to apply for coverage under the General Permit or an individual permit, Bestway is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).²⁰

To be eligible to discharge under the General Permit, Bestway must submit to DEC a registration form called a "Notice of Intent."²¹ Notice of Intent forms are available online from DEC.²² To register, Bestway is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system or immediate surface water body or wetland to which site runoff discharges, and the name of the watershed and nearest waterbody to which the site ultimately discharges and information about whether the receiving waters are impaired.²³ Bestway has failed to prepare and file a Notice of Intent or an application for an individual permit.²⁴

C. Bestway is Violating the Clean Water Act by Failing to Comply with the General Permit.

²⁰ Sections 301(a) and 402(a) and (p) make it unlawful for Bestway to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require Bestway to apply for a NPDES permit that covers Bestway's discharge of stormwater associated with industrial activity.

²¹ See General Permit, Part I.E.3. In notifying Bestway that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Riverkeeper does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

²² See http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

²³ See Division of Water, NY DEC, *Notice of Intent For Stormwater Discharges Associated with Industrial Activity under the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit GP-0-12-001 (MSGP)* (2012), available at: http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

²⁴ A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

As a discharger of stormwater associated with industrial activity, Bestway must comply at all times with the requirements of the General Permit (or an individual permit).²⁵ By discharging stormwater associated with industrial activity without complying with the General Permit, Bestway is violating CWA Sections 301(a) and 402(a) and (p).²⁶ The main General Permit requirements that Bestway has failed and continues to fail to meet are explained further below.

1. Bestway has not developed and implemented a Stormwater Pollution Prevention Plan.

Before submitting a Notice of Intent, Bestway must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with schedules established in the General Permit.²⁷ The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.²⁸

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.²⁹

Bestway has not developed and implemented a legally compliant SWPPP, as required by Part III of the General Permit.³⁰

2. Bestway has not implemented control measures and Best Management Practices that meet the best available technology standards.

Bestway cannot legally discharge stormwater under the General Permit until Bestway implements mandatory general and sector-specific control measures called Best Management Practices ("BMPs") in order to minimize the discharge of pollutants from the Facility.³¹ The

²⁵ This section discusses the compliance requirements of the General Permit. If Bestway elects to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus Bestway will still be required to comply with all of the following.

²⁶ Sections 301(a) and 402(a) and (p) make it unlawful for Bestway to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

²⁷ See General Permit Part III.B.

²⁸ See General Permit Part III.A.

²⁹ See General Permit Part III.C.

³⁰ Riverkeeper believes no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

³¹ See General Permit Part I.B.1, see also Part VII (setting forth sector-specific control measures and practices).

selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that “[t]he owner or operator must select, design, install, and implement control measures (including best management practices),” in accordance with good engineering practices, to meet the effluent limits contained in the permit.³² The General Permit’s effluent limits include both numeric limits specific to certain sectors,³³ as well as non-numeric technology-based effluent limits that apply to all facilities.³⁴ These non-numeric technology-based restrictions include minimizing the exposure of pollutants to stormwater³⁵ and minimizing the discharge of pollutants in stormwater³⁶ “to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”³⁷

Bestway has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VIII of the General Permit.

3. Bestway has not conducted routine site inspections and complied with monitoring, recordkeeping, and reporting requirements.

Bestway must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.³⁸ The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.³⁹ Records of this inspection must be kept for five years.⁴⁰

In addition, qualified facility personnel must carry out routine inspections at least quarterly.⁴¹ During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and

³² General Permit Part I.B.1.a; see also Part III.C.7 (“The SWPPP must document the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part I.B.1.a.(2) and where applicable in Part VIII, and the sector specific numeric effluent limitations in Part VIII.”).

³³ See General Permit, Part VIII.

³⁴ See General Permit, Part I.B.1.a.2.

³⁵ See General Permit, Part I.B.1.a.2.a.

³⁶ See General Permit, Part I.B.1.a.2.f.

³⁷ General Permit, Part I.B.1.

³⁸ See General Permit, Part IV.A.1

³⁹ See General Permit, Part IV.A.1

⁴⁰ See General Permit, Part IV.A.2

⁴¹ See General Permit, Part III.C.7.b.2.

document any deficiencies in the implementation and/or adequacy of the SWPPP.⁴² Such deficiencies must then be addressed through corrective actions.

The General Permit also requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.⁴³ In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually;⁴⁴
- conduct visual monitoring of stormwater discharges at least quarterly;⁴⁵
- perform an annual dry weather inspection to detect non-stormwater discharges;⁴⁶
- inspect, sample and monitor discharges from coal pile runoff;⁴⁷
- inspect, sample and monitor discharges from secondary containment structures and transfer areas;⁴⁸
- document storm events during which any samples are taken;⁴⁹
- document all of these monitoring activities;⁵⁰
- keep records of the monitoring with the Facility's SWPPP;⁵¹ and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.⁵²

Because Bestway engages in industrial activities associated with Sector P, sampling may be required for:

- Oil & Grease;
- Chemical Oxygen Demand;
- Benzene;
- Ethylbenzene;
- Toluene; and
- Xylene.⁵³

⁴² See General Permit, Part III.C.7.b.1 and b.3.

⁴³ See General Permit, Part IV.B.3.

⁴⁴ See General Permit, Part IV.B.1.c (requiring at least annual collection and analysis of stormwater samples). See General Permit, Part IV.B.1.d, e, f, and g for obligations to sample more frequently.

⁴⁵ See General Permit, Part IV.B.1.a.

⁴⁶ See General Permit, Part IV.B.1.b.

⁴⁷ See General Permit, Part IV.B.1.d.

⁴⁸ See General Permit, Part IV.B.1.f.

⁴⁹ See General Permit, Part IV.B.2.e.

⁵⁰ See, e.g., General Permit, Parts IV.B.1.a.8, IV.B.1.b.4, IV.B.1.c.9, *see generally* Part IV.E.

⁵¹ See General Permit, Part IV.E.

⁵² See General Permit, Part IV.B.1 and 2 and Part IV.C.

⁵³ See General Permit, Part VIII, Sector P.

Because Bestway engages in industrial activities associated with Sector N, sampling may be required for:

- Total Suspended Solids;
- Chemical Oxygen Demand (COD)
- Oil and Grease
- Aluminum
- Cadmium
- Chromium
- Copper
- Iron
- Lead
- Zinc⁵⁴

Riverkeeper is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.⁵⁵ This notice provides Bestway with sufficient information to identify the standards and limitations that apply to all categories of industrial activity.

Bestway has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by, at least, Parts III, IV, and VIII of the General Permit. Bestway also has failed to retain records and submit monitoring reports to DEC, as required by, at least, Parts IV and VIII of the General Permit.

4. Bestway has failed to comply with additional requirements located in Part VIII of the General Permit.

As noted above, the General Permit contains various requirements specific to P. These requirements, some of which are referenced above, are collected in Part VIII of the General Permit. They include:

- A requirement that the site map identify the locations of any of the following activities or sources:
 - Fueling stations;
 - Vehicle/equipment maintenance or cleaning areas;
 - Storage areas for vehicle/equipment with actual or potential fluid leaks;
 - Loading/unloading areas;
 - Areas where treatment, storage or disposal of wastes occur; liquid storage tanks;
 - Processing areas;
 - Storage areas; and

⁵⁴ See General Permit, Part VIII, Sector N.

⁵⁵ See General Permit, Part VIII.

- All monitoring areas
- A requirement that the SWPPP identify the potential for the following to contribute pollutants to stormwater discharges:
 - On-site waste storage or disposal;
 - Dirt/gravel parking areas for vehicles awaiting maintenance; and,
 - Fueling areas.
- A requirement that the following areas/activities be included in all inspections:
 - Storage area for vehicles /equipment awaiting maintenance;
 - Fueling areas;
 - Indoor and outdoor vehicle/equipment maintenance areas;
 - Material storage areas;
 - Vehicle/equipment cleaning areas; and
 - Loading/unloading areas.
- A requirement that employee training take place, at a minimum, annually (once per calendar year) and address the following, as applicable:
 - Used oil and spent solvent management;
 - Fueling procedures;
 - General good housekeeping practices;
 - Proper painting procedures; and
 - Used battery management.
- A requirement that storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks be confined to designated areas (delineated on the site map). The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - The use of drip pans under vehicles and equipment;
 - Indoor storage of vehicles and equipment;
 - Installation of berms or dikes;
 - Use of absorbents;
 - Roofing or covering storage areas; and
 - Cleaning pavement surface to remove oil and grease.
- A requirement that storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) are maintained in good condition, so as to prevent contamination of stormwater, and plainly labelled (e.g., "used oil," "spent solvents," etc.). The SWPPP shall document considerations of the following storage-related BMPs (or their equivalents):

- Indoor storage of the materials;
 - Installation of berms/dikes around the areas, minimizing runoff of stormwater to the areas;
 - Using dry cleanup methods; and
 - Treating and/or recycling the collected stormwater runoff.
- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of stormwater runoff from all areas used for vehicle/equipment cleaning. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Performing all cleaning operations indoors;
 - Covering the cleaning operation;
 - Ensuring that all wash waters drain to a proper collection system (i.e., not the stormwater drainage system unless SPDES permitted); and,
 - Treating and/or recycling the collected stormwater runoff.
 - A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from all areas used for vehicle/equipment maintenance. The SWPPP shall document consideration of the following BMPs (or their equivalents):
 - Performing maintenance activities indoors; using drip pans;
 - Keeping an organized inventory of materials used in the shop;
 - Draining all parts of fluids prior to disposal;
 - Prohibiting wet clean up practices where the practices would result in the discharge of pollutants to stormwater drainage systems;
 - Using dry cleanup methods;
 - Treating and/or recycling collected stormwater runoff; and
 - Minimizing runoff/runoff of stormwater to maintenance areas.⁵⁶

As noted above, the General Permit contains various requirements specific to N. These requirements, some of which are referenced above, are collected in Part VIII of the General Permit. They include:

- A requirement that the site map identify the locations of any of the following activities or sources:
 - Locations of haul and access roads;
 - Scrap and waste material storage areas;
 - Outdoor scrap and waste processing equipment;
 - Areas where materials are sorted, transferred, stockpiled;

⁵⁶ See General Permit, Part VIII, Sector P.

- Containment areas.
- The SWPPP shall include a programme to control materials received for processing:
 - Notify suppliers/public which scrap materials will not be accepted at the facility or are only accepted under certain conditions
 - Develop and implement procedures to inspect inbound shipments of recyclable materials
 - Develop and distribute educational material targeting the public and/or commercial drivers of inbound vehicles;
 - Training targeted for personnel engaged in the inspection and acceptance of inbound recyclable materials.
- The plan shall address BMPs to minimize contact of particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Good housekeeping measures, including frequent sweeping of haul and access roads and the use of dry absorbent or wet vacuum clean up methods, to contain or dispose/recycle residual liquids originating from recyclable containers
 - Good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas.
- The SWPPP must describe MBPs to minimize contact of stormwater runoff with stockpiled materials, process materials, and non-recyclable wastes. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Store the equivalent one day's volume of recyclable materials indoors;
 - Containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading installed where appropriate to minimize contact of stormwater runoff with outdoor processing equipment or stored materials;
 - Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading;
 - Cover containment bins, dumpsters, roll off boxes;
 - Permanent or semi permanent covers over areas where materials are transferred, stored or stockpiled;
 - Install a sump/pump with each containment pit, and discharge collected fluids to a sanitary sewer system;
 - Sediment traps, vegetated swales and strips, catch basin filters and sand filters to facilitate settling or filtering of sediments.

that becomes available after the date of this Notice of Intent to File Suit.⁵⁹ These violations are ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

VI.

RELIEF REQUESTED

Riverkeeper will ask the court to order Bestway to comply with the Clean Water Act, to pay penalties, and to pay Riverkeeper's costs and legal fees.

First, Riverkeeper will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Riverkeeper will seek an order from the Court requiring Bestway to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,⁶⁰ each separate violation of the CWA subjects Bestway to a penalty not to exceed \$37,500 per day for each violation occurring before November 2, 2015, and up to \$52,414 per day for each violation that occurred after November 2, 2015.⁶¹ Riverkeeper will seek the full penalties allowed by law.

Third and lastly, pursuant to Section 505(d) of the CWA, Riverkeeper will seek recovery of litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

VII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Riverkeeper, Inc.
20 Secor Road

⁵⁹ See, e.g. *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.").

⁶⁰ 33 U.S.C. § 1319(d); see also 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

⁶¹ 40 C.F.R. § 19.2.

Ossining, NY 10562
(914) 478-4501
Attn.: Sean Dixon

VIII.

IDENTIFICATION OF COUNSEL

Riverkeeper is represented by legal counsel in this matter. The name, address, and telephone number of Riverkeeper's attorneys are:

Nicholas W. Tapert, Esq.
Edan Rotenberg
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
(212) 242-2355

IX.

CONCLUSION

The foregoing provides more than sufficient information to permit Bestway to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.⁶²

If Bestway has developed a SWPPP, Riverkeeper requests that Bestway send a copy to the undersigned attorney.⁶³ Otherwise, Riverkeeper encourages Bestway to begin developing a SWPPP immediately after receiving this letter and asks that Bestway please inform the undersigned attorney of Bestway's efforts so Riverkeeper can work with Bestway to avoid disputes over the contents of the SWPPP.⁶⁴

⁶² 40 C.F.R. § 135.3(a).

⁶³ Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

⁶⁴ Riverkeeper will not send a new notice letter in response to any effort Bestway makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). See also *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995).

During the sixty-day notice period, Riverkeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If Bestway wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,



Nicholas W. Tapert
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
(212) 242-2355

cc:

Scott Pruitt, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Catherine R. McCabe, Acting EPA Region 2 Administrator
Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Basil Seggos, Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

515 Gardner LLC
119-19 15th Avenue
College Point, New York 11356

(plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).